



GRANTING OF FEDERAL GUARANTEES FOR  
DIRECT INVESTMENTS ABROAD

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Only the German text is legally effective.

INVESTMENT GUARANTEES OF THE  
FEDERAL REPUBLIC OF GERMANY

► **Direct Investments Abroad**

## ► GRANTING OF FEDERAL GUARANTEES FOR DIRECT INVESTMENTS ABROAD

### SCOPE AND BENEFIT

*The Federal Republic of Germany (Federal Government) may grant guarantees against political risks for eligible direct investments abroad of German entrepreneurs. Investment guarantees protect German business ventures abroad against unpredictable risks in the host country and thus are part of the risk management. They begin to be effective long before a case of loss occurs and provide political support for German projects abroad. A Federal guarantee can only be granted if there is sufficient legal protection for capital investments in the respective host countries. Commercial risks are excluded from cover. There is no legal entitlement to the issuance of a guarantee.*

*This leaflet is a first non-binding information. It gives a general outline of the main issues in connection with the granting of guarantees for direct investments abroad. You can find further information under [WWW.AGAPORTAL.DE](http://WWW.AGAPORTAL.DE) in the section investment guarantees as well as in separate leaflets for special topics.*

### PRECONDITIONS FOR GRANTING COVER

#### **DIRECT INVESTMENTS:**

The object insured are new **DIRECT INVESTMENTS** abroad. These are capital investments that are made long-term in cash or other in-kind contributions in a foreign project and with the objective of entrepreneurial activity. In contrast, financial investments without an entrepreneurial activity (for example portfolio investments) are not eligible for cover.

#### **ELIGIBILITY FOR PROMOTION:**

The project or the project section that is to be covered has to be eligible for promotion in the overall view. Positive effects on the host country and environmental aspects as well as positive reverse effects of the direct investments on Germany are elements of special importance for the eligibility for promotion.

With regard to the host country it is expected that eligible investments contribute to the economic development of the host country and the further development of relations between the Federal Republic of Germany and the host country.

To assess the eligibility for promotion under environmental considerations the Federal Government applies a standardised test procedure in accordance with international common practise. The leaflet "Environment" explains every step of the environmental audit, and it describes the necessary information as well as the documents to be handed in if required. As a rule the eligibility for promotion under environmental consider-



ations can be regarded as given if international environmental standards are complied with. The prerequisite for the eligibility for promotion under environmental considerations is the compliance with the respective national standards of the host country. If international standards are not attained with regard to projects with a strong or limited environmental impact, the Federal Government examines each individual case in detail. If in the case in question the comparison between the national standards and the international standards shows the national standards to be inferior to the international guiding values, further explanatory details will be required from the applicant. In this connection the decision-making process also takes into account if and to which extent the investor plans additional measures for improving the environmental situation.

Relating to the reverse effects on Germany it is of vital importance how the investments influence the job situation.

#### **LEGAL PROTECTION:**

Furthermore, **LEGAL PROTECTION** for the direct investments has to be secured. This is the case if an Investment Protection Treaty (IPT) exists with the host country or the national legal system of the host country grants sufficient legal protection. The application of the IPT may depend on certain authorisations that have to be submitted on application for a guarantee. You can find a description of the legal protection requirements of the partner countries (country classification list) in the AGA-portal.

## **OBJECTS INSURED**

#### **DIRECT INVESTMENTS ELIGIBLE FOR COVER:**

Objects insured can be **DIRECT INVESTMENTS** in the form of equity participations, endowment capital, investment-like loans or other rights qualifying as assets.

#### **EQUITY PARTICIPATIONS:**

Shares can be covered in the form of **EQUITY PARTICIPATIONS** acquired in a project company on its establishment or within a capital increase by contributions made in capital, goods or other contributions, granting voting and control rights or the right to be consulted as well as the participation in the earnings and in the liquidation proceeds. There are particularities for equity participations held via holding companies in the host country. More detailed information can be found in a special leaflet "Holding".

#### **ENDOWMENT CAPITAL:**

Furthermore the capitalisations of German branch offices or plant locations abroad (**ENDOWMENT CAPITAL**) are eligible for cover. Endowment capital are funds provided long-term to the branch office or plant location by the policyholder in the form of capital, goods or other contributions. A separate annual financial statement has to be drawn for the branch office or the plant location that discloses and deals with the endowment capital as nominal capital. Special agreements will be made in the guarantee policy for the drawing of the separate annual financial statement and the calculation of the endowment capital in the case of an event of loss.

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### INVESTMENT-LIKE LOAN:

**INVESTMENT-LIKE LOANS** can be guaranteed as well. The Federal Government is prepared to cover shareholder loans and bank loans. With regard to its purpose and form the loan has to be similar to an equity participation. As a rule this can be taken for granted if the form of contract is aligned with the requirements of the project and if the loan is long-term with a moderate interest rate that, for example, is geared to the refinancing costs.

### OTHER RIGHTS QUALIFYING AS ASSETS:

Furthermore **OTHER RIGHTS QUALIFYING AS ASSETS** can be covered provided that the capital investment has the character of a direct investment, i. e. it has to be made long-term in cash or other in-kind contributions and with the objective of entrepreneurial activity. The cover can only include those rights or claims that are explicitly characterised as right qualifying as asset in the guarantee policy (for instance concessions, rights under production sharing agreements for oil and gas, bonds). The guarantee policy will be adapted to the respective individual case in consideration of its particularities. Rights qualifying as assets that are not mentioned in the guarantee policy are not covered even if they have been provided for in the contracts for the capital investment.

### EARNINGS:

If cover is granted for capital, **EARNINGS** can be included in the guarantee as well on the policyholder's application. Earnings are those amounts that are being distributed for a certain period of time as shares in profits on investments or are to be paid as interest. Earnings cannot be included into cover later on. The beginning of the cover for earnings can be postponed if earnings are not expected at first. The cover for earnings covers the first part of the amounts payable in one guarantee year according to the annual percentage (suitable to the project) stipulated in the guarantee policy and calculated on the basis of the contribution value (§ 7 of the General Terms and Conditions). In accordance with the decision-making practise of the Federal Government the maximum amount of the guarantee for the cover for earnings is 100% of the maximum amount of the guarantee for the cover for capital. There are special features for BOT-projects. You can find more information in the leaflet "BOT-type models".

### RISKS COVERED

#### POLITICAL RISKS:

The guarantees cover losses caused by **POLITICAL RISKS**. A Federal Guarantee covers the following risks:

#### ► EXPROPRIATION RISK

Nationalisation, expropriation or other sovereign acts that are equivalent to an expropriation in their effects



► **BREACH OF CONTRACT RISK**

Breach of legally binding commitments made by the government or state-directed or state-controlled authorities as far as the project company is entitled to these commitments and the commitments are mentioned in the guarantee policy (for further information please see the leaflet “Breach of Contract Risk”).

► **WAR RISK**

War or other armed conflicts, revolution or civil commotion or acts of terrorism in connection with such events

► **MORATORIUM RISK**

Payment embargoes or moratoriums

► **CONVERTIBILITY AND TRANSFER RISK**

Impossibility of converting or transferring amounts deposited with a sound bank for transfer to the Federal Republic of Germany

Whether such a risk has been realised will be assessed in the event of loss on the basis of the circumstances in accordance with the German principles of law in consideration of specific international law.

## EVENT OF LOSS

### LOSSES OF CAPITAL AND EARNINGS:

The Federal Government is liable for losses of the covered capital or the covered earnings caused by political events or measures. The preconditions for the indemnification of an event of loss apply, inter alia, to the political event, the insured object and the kind of interference. For the particulars we refer to § 5 of the General Terms and Conditions and to the detailed description in the AGA-portal.

## AMOUNT OF LIABILITY/ CALCULATION OF THE INDEMNIFICATION

### CONTRIBUTION VALUE:

The guarantee is to secure the amount paid by the policyholder for the capital investment to be covered. According to this the cover will be determined on the basis of the value of the contributions made by the policyholder to the capital investment (**CONTRIBUTION VALUE**). The contribution value can include the policyholder's contributions to the capital investment to the extent to which the policyholder is allowed to state them in his balance sheet as acquisition cost or manufacturing cost (cp. § 7 para. 1 of the General Terms and Conditions), on special application reinvested profits (up to in general 300%, cp. § 7 para. 2 of the General Terms and Conditions) can be included as well. All contributions that are to be covered by the guarantee have to be made up to a specific date stipulated in the guarantee policy.

**► GRANTING OF FEDERAL GUARANTEES FOR DIRECT INVESTMENTS ABROAD****MAXIMUM AMOUNT OF THE GUARANTEE/  
MAXIMUM LIABILITY:**

The **GUARANTEE POLICY** also stipulates the **MAXIMUM AMOUNT OF THE GUARANTEE** (cover for capital plus, if applied for, cover for earnings) and the **MAXIMUM LIABILITY OF THE FEDERAL GOVERNMENT** resulting from the maximum amount of the guarantee less the uninsured percentage (cp. § 10, para. 1 of the General Terms and Conditions); this is the upper limit for all possible financial obligations that the Federal Government can incur under the guarantee.

**CALCULATION OF THE INDEMNIFICATION:**

The indemnification to be paid by the Federal Government will be calculated on the basis of the loss proven by the policyholder. The indemnification compensates the policyholder's loss of assets due to the event of loss. The calculation of the indemnification will be based on the gross loss, i. e. the current market value of the capital investment at the time of the event of loss, not exceeding the contribution value (§§ 6, 7, 18 para. 1 of the General Terms and Conditions).

**CURRENT MARKET VALUE:**

If in the case of an imminent event of loss the actual value of the capital investment (**CURRENT MARKET VALUE**) is minor to the contribution value, the indemnification will be calculated on the basis of the current market value since losses that occurred prior to the event of loss are excluded from cover.

**PLAUSIBILITY CHECK:**

The determination of the indemnification begins with a **PLAUSIBILITY CHECK** on the basis of the balance sheets and the profit and loss accounts that were handed in. If the amount of loss that results from the plausibility check is minor to the amount of loss for which the policyholder asserts a claim and if there are doubts about the economic value and thus about the amount of loss claimed, the policyholder has to appraise the enterprise – by applying accepted business processes – in order to determine the current market value. In the case that in consideration of this appraisal a reduced current market value is determined, it has to be taken as a basis for the following calculation of the loss. With regard to **LOANS** the Federal Government normally refers to the nominal value of the claim. The Federal Government examines the liquidity only insofar as a repatriation according to the schedule is doubtful.

**DEDUCTIONS/INSURED PERCENTAGE:**

In accordance with § 18 para. 2 of the General Terms and Conditions all compensation payments or other monies received in connection with the event of loss will be deducted to determine the net loss. The guarantee covers the net loss only insofar as it does not exceed the maximum amount of the guarantee for the cover for capital or the maximum amount of the guarantee for the cover for earnings (covered loss). The indemnification sum results from the covered loss less the uninsured percentage.

**DEADLINES:**

The determination of the loss will be effected within a reasonable time after the policyholder has furnished all necessary documents. The indemnification will be paid one month after mailing the notice of loss adjustment, but not earlier than six months after the event of loss.

**MISCELLANEOUS****DATE FOR APPLICATION:**

According to § 7 para. 4 of the General Terms and Conditions **CONTRIBUTIONS MADE BEFORE FILING A GUARANTEE APPLICATION** are in principle excluded from cover. Therefore applications should be filed at an early stage of the respective project.

**GUARANTEE PERIOD:**

The **GUARANTEE PERIOD** begins on delivery of the letter of acceptance to the policyholder. The guarantee period of normally 15 years is stipulated in the guarantee policy. On expiry it can be prolonged up to five years at any one time.

**COST:**

A separate leaflet “Fees and Premiums” informs about the **HANDLING FEE** for the application and the **GUARANTEE PREMIUM**.

Cover from the Federal Republic of Germany for business transactions abroad

The German Government supports German business ventures abroad with its Export Credit and Investment Guarantee Schemes as well as the Untied Loan Guarantee Scheme, thus securing economic growth and safeguarding jobs. To this end, the Federal Republic of Germany provides guarantees against commercial and political risks in connection with export transactions as well as against the political risks of foreign direct investments. In addition to this framework, it is also possible to cover the commercial and political risks of untied loans to finance projects which are particularly deserving of support.

The German Government has mandated a consortium formed by PricewaterhouseCoopers Aktiengesellschaft Wirtschaftsprüfungsgesellschaft and Euler Hermes Deutschland AG to manage these promotion schemes.



Federal Ministry  
of Economics  
and Technology

OUR PARTNERS



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